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State v. McAtee Appellant's Brief Dckt. 44710

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44710
)	
v.)	LATAH COUNTY NO. CR 2016-2957
)	
GREGORY ALLEN MCATEE,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

Nature of the Case

Gregory Allen McAtee pled guilty to felony DUI. The district court declined Mr. McAtee’s request for a withheld judgment and imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. On appeal, Mr. McAtee asserts that the district court abused its discretion by declining to grant a withheld judgment, or to even consider it as an option.

Statement of the Facts and Course of Proceedings

After a long day at work and an evening with friends at a bar in Lewiston, Mr. McAtee left with a friend of a friend – Kyle Breitneberg – thinking he was getting a ride home. (PSI, pp.3-4.) He fell asleep in the car and awoke in the neighboring city of Moscow. (PSI, p.4.)

When he could not convince the driver to take him back, Mr. McAtee decided to drive himself; he had work in the morning and was anxious to keep his job. (PSI, p.4.) While traveling along highway 95, he was stopped by the state police and arrested for driving under the influence. (“DUI.”) (PSI, p.3.)

The State charged Mr. McAtee with felony DUI and two misdemeanors: driving without privileges and driving with an open alcohol container. (R., pp.49, 50.) Pursuant to an agreement, Mr. McAtee pled guilty to felony DUI. (Tr., p.30, Ls.3-30.) In exchange, the State agreed to dismiss the two misdemeanor charges, and to recommend a sentence of five years, with two years fixed, and retained jurisdiction, leaving Mr. McAtee free to argue for a less severe sentence. (Tr., p.24, L8. – p.25, L.1; R., pp.55, 70.)

At the sentencing hearing, Mr. McAtee apologized for his conduct and accepted responsibility for making a “selfish decision.” (Tr., p.48, Ls.6-8.) He told the court of his plans to do better, and his goal to become a long-haul commercial driver. (Tr., p.38, Ls13-24.) He explained the need of a felony-free record to pursue that vocation, and asked the court for a withheld judgment. (Tr., p.48, Ls.21-25.)

The district court did not directly comment on Mr. McAtee’s request for a withheld judgment. The court stated, “I don’t have any options. ... Really, a retained jurisdiction is the only option that I have” (Tr., p.57, L. – p.58, L.5), and went on to impose a sentence of five years, with two years fixed, and retain jurisdiction (Tr., p.58, Ls.16-18; R., p.74). Mr. McAtee timely appealed. (R., p.79.)

ISSUE

Did the district court abuse its discretion by declining to grant, or even consider, a withheld judgment?

ARGUMENT

The District Court's Refusal To Grant, Or Even Consider, A Withheld Judgment Was Unreasonable Under The Circumstances, Representing An Abuse Of Discretion

A. Introduction

Mr. McAtee contends that the district court abused its discretion by refusing to grant a withheld judgment, or to even consider that option in this case.

B. Standard Of Review

“A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decisions for an abuse of discretion, which occurs if a sentence is unreasonable, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

After a person has been convicted of a crime, the district court may, in its discretion, withhold judgment. I.C. § 19-2601(3); *State v. Rollins*, 152 Idaho 106, 114 (Ct. App. 2011). Refusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate. *Rollins*, 152 Idaho at 114. Factors that bear on the imposition of sentence also apply on review of the discretionary decision to withhold judgment. *State v. Geier*, 109 Idaho 963, 965 (Ct. App. 1985).

C. The District Court's Refusal To Grant A Withheld Judgment Was Unreasonable Under The Circumstances, Representing An Abuse Of Discretion

McAtee was thirty-nine years old at the time of his sentencing. (PSI, p.21.) He had been living in poverty, working at unskilled jobs for low wages, and homeless. (PSI, pp.14, 18; GAIN-1, p.8.)¹ He needs a stable home and steady income, and he recognizes that getting a good job – and keeping it – is essential. (PSI, p.17; Tr., p.48, Ls.13-22.)

Mr. McAtee has aspirations of becoming a commercial long-haul truck driver. (PSI, p.16; Tr., p.48, Ls.13-20.) But he is not eligible to pursue this vocation, or even begin the training school, so long as he has a felony DUI on his record. (Tr., p.48, Ls.13-20.) Granting Mr. McAtee's request for a withheld judgment would allow him to pursue a career as a licensed commercial driver, and provide a significant incentive to stay away from drinking and from committing any new offense. (Tr., p.48, Ls.13-25.) Additionally, having a livelihood that depends on maintaining a clean driving record will reinforce Mr. McAtee's good driving behavior long into the future.

Mr. McAtee's past success in completing DUI court (PSI, p.16), shows his potential to succeed in a regulated environment. However, by refusing to consider a withheld judgment, the district court ignored this potential, and denied Mr. McAtee an opportunity to demonstrate his resolve to turn his life around. The district court acted unreasonably by disregarding Mr. McAtee's plea for this chance, and by concluding there existed no option other than to impose sentence. (Tr., p.57, L. – p.58, L.5.) Contrary to the conclusion reached by the district court, a withheld judgment provided the *best* option for protecting society, deterring future misconduct, and providing for the long-term rehabilitation of Mr. McAtee. The district court's

¹ The GAIN-1-Recommendation and Referral Summary, print date 11/8/2016, is appended to the PSI.

refusal to grant a withheld held judgment, or to even consider it, represents an abuse of discretion.

CONCLUSION

Mr. McAtee respectfully requests that this Court vacate his judgment of conviction and remand his case to the district court for a new sentencing, with directions that the court consider the option of granting him a withheld judgment.

DATED this 27th day of June, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of June, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

GREGORY ALLEN MCATEE
INMATE #121579
CAPP
15505 S PLEASANT VALLEY ROAD
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E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas